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November 30, 2021

VIA ECF

MEMO ENDORSED.

The Honorable Ona T. Wang
United States District Court
500 Pearl Street, Room 20D
New York, NY 10007-1312

Re: *The Sanborn Library LLC. v. ERIS Information Inc., et al.*, 1:19-cv-02049-LAK-OTW

Dear Judge Wang:

We represent Plaintiff/Counterclaim-Defendants Sanborn Library LLC and Environmental Data Resources, LLC (collectively, "EDR"). We write after conferring with and with the consent of Defendants/Counterclaim-Plaintiffs ERIS Information Inc., Eco Log Environmental Risk Information Services Ltd., and ERIS Information Limited Partnership (collectively, "ERIS") requesting the Court's permission to file certain portions of EDR's Opposition to ERIS's Motion to Compel Production of Privileged Documents and certain accompanying exhibits to the Declaration of James S. Blank (collectively, the "Opposition") under seal. In accordance with Rules III(d) and IV(a) of Your Honor's Individual Practices, EDR has publicly filed on ECF a redacted version of the Opposition, and submits with this letter an unredacted version of its submission.

EDR's Opposition attaches and describes the contents of the following exhibits previously designated as "Highly Confidential-Outside Counsel's Eyes Only" in accordance with the Amended Protective Order (ECF 96).

1. **Exhibits 1, 3, and 16:** These exhibits contain excerpts of deposition testimony by ERIS's Rule 30(b)(6) witnesses, Carol Le Noury and Mark Mattei, and ERIS's outside counsel, Jovan Jovanovic, which discuss various aspects of ERIS's commercially sensitive business information and business practices, including ERIS's market and product strategies, ERIS's acquisition of Sanborn Maps, and legal advice provided by ERIS's attorneys. ERIS has designated these transcripts as "Highly Confidential – Outside Counsel's Eyes Only."
2. **Exhibits 2, 4-11, 13-15, 17-20, 22-23, 25-33, 37, 39, and 45:** These exhibits are emails, memoranda, and other documents produced by ERIS that reflect ERIS's commercially sensitive information and business practices, including ERIS's market and product strategies, ERIS's acquisition of Sanborn Maps, communications with non-parties that disclose confidential business relationships, and discussions of legal advice provided by ERIS's attorneys. ERIS has designated these documents as "Highly Confidential – Outside Counsel's Eyes Only."
3. **Exhibits 12, 35-36:** These exhibits contain emails produced by non-party ProQuest LLC which reflect commercially sensitive information and practices, including communications with ERIS that disclose their confidential business relationship, and internal procedures and discussions

regarding the access and acquisition of certain of its products. ProQuest LLC has designated these documents as “Confidential.”

4. **Exhibit 21:** This exhibit contains an excerpt of deposition testimony by EDR’s Rule 30(b)(6) witness, Paul Schiffer, which discusses aspects of EDR’s commercially sensitive information and business practices. The excerpt includes confidential internal communications regarding alleged correspondence from ERIS regarding its use of Sanborn Maps. EDR has designated this transcript as “Highly Confidential – Outside Counsel’s Eyes Only.”
5. **Exhibit 24:** This exhibit is Defendant’s Responses to The Sanborn Library LLC’s Third Set of Interrogatories (Nos. 8-12) propounded by EDR reflecting aspects of ERIS’ commercially sensitive information and practices, including ERIS’s confidential communications and business relationships with non-parties. ERIS has designated these responses as “Highly Confidential – Outside Counsel’s Eyes Only.”
6. **Exhibit 34:** This exhibit contains excerpts of deposition testimony by non-party William Forsyth, Rule 30(b)(6) representative of ProQuest LLC, which discusses ProQuest LLC’s commercially sensitive information and practices, including internal practices and protocols regarding the access and acquisition of certain of its products and confidential discussions with ERIS. ProQuest LLC has designated this deposition transcript as “Highly Confidential – Outside Counsel’s Eyes Only.”
7. **Exhibit 47:** This exhibit is a spreadsheet listing the copyrighted Sanborn Maps and corresponding ERIS orders at issue bearing Bates stamp EDR00834025. This exhibit reflects ERIS’s commercially sensitive information and practices, including customer information and order numbers. EDR has designated this document as “Highly Confidential – Outside Counsel’s Eyes Only.”

The exhibits described above reflect the commercially sensitive business information of EDR, ERIS, and/or third parties, the disclosure of which may result in competitive injury. Consistent with *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006), EDR’s request to seal is “narrowly tailored” to serve the public interest. In addition, none of the materials sought to be sealed is a pleading. *See Bernstein v. Bernstein Litowitz Berger & Grossman LLP*, 814 F.3d 132 (2d Cir. 2016). Instead, these exhibits are filed in support of a non-dispositive motion and contain business information deemed by EDR, ERIS, and/or third parties to be commercially sensitive.

The privacy interests of third parties, such as ProQuest and others, are an additional reason to seal the deposition testimony of ProQuest’s 30(b)(6) representative and Exhibits 1 and 29. *See United States v. Amodeo*, 71 F.3d 1044, 1050–51 (2d Cir. 1995) (“The privacy interests of innocent third parties should weigh heavily in a court’s balancing equation. . . . Such interests, while not always fitting comfortably under the rubric ‘privacy,’ are a venerable common law exception to the presumption of access.”). The subject matter of these documents and testimony—EDR and ERIS’s business dealings with ProQuest and other third parties—is “traditionally considered private rather than public,” and as noted above, could subject EDR, ERIS, ProQuest, or the other third parties to competitive injury if these documents and information are disclosed to competitors. *Id.* at 1051.

Given the proprietary and confidential nature of these materials, EDR respectfully submits this motion to seal and redact certain exhibits discussed in, and appended to, the Opposition.

Respectfully submitted,

/s/ Joshua S. Wolkoff

Joshua S. Wolkoff

cc: Counsel of Record (via ECF)

Application **GRANTED**. The Clerk of Court is respectfully directed to close ECF 167.

SO ORDERED.



Ona T. Wang
U.S.M.J.

8/30/22